



STATE BOARD OF EQUALIZATION

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December 20, 1989

Dear Ms.

This is in response to your letter of November 22, 1989, requesting advice regarding the meaning of "owner" for purposes of Revenue and Taxation Code section 69.5.

Referring to our previous telephone conversation, your letter refers to a situation where the ownership of a residence is held in part in a revocable trust and in part in an irrevocable trust. The life beneficiary of both trusts resides in the residence and otherwise meets all other requirements of section 69.5. Since that section does not define the term "owner" it is not clear whether the life beneficiary can be considered to be owner for purposes of the benefits provided by section 69.5.

Section 69.5 generally provides that any person over the age of 55 years who resides in property which is eligible for the homeowner's exemption may transfer the base year value of that property to any replacement dwelling of equal or lesser value which is purchased or newly constructed by that person as his or her principal residence. Subdivision (b) imposes several qualifications for this benefit including the requirement that the claimant be an "owner" and a resident of the original property and also that at the time of claiming the relief that the claimant be an "owner" of the replacement dwelling and occupy it as his or her residence (subds. (b)(1) and (4)). When you state that ownership of a residence is held in part in a revocable trust and in part in an irrevocable trust, I assume that you mean that legal title to the property is held in the name of a trustee who is some person other than the life beneficiary. Based on this assumption, the question then arises as to whether the trustee who holds bare legal title or the beneficiary who holds equitable and beneficial title, are to be treated as "owner" for purposes of section 69.5.

As I told you, I do not believe that we have previously expressed our views on this question. For Proposition 13 change in ownership purposes, however, current law treats the

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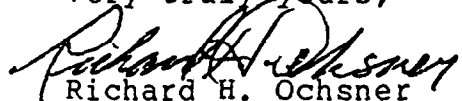
present beneficiary of a trust who has a vested beneficial and equitable interest in the property as the owner rather than the trustee who merely holds legal title. Further, the law gives no effect to a transfer in trust when that trust is still revocable. In that case, the transferor still retains beneficial ownership. These conclusions are supported by Allen v. Sutter County Board of Equalization (1983) 139 Cal.App.3d 887 as well as Revenue and Taxation Code section 61, subdivision (g); section 62 subdivision (d); and Property Tax Rule 462, subdivision (i) (18 California Code of Regulations section 462(i)). See also Parkmerced Co. v. City and County of San Francisco (1983) 149 Cal.App.3d 1091, holding that the transfer of bare legal title does not constitute a change in ownership.

Although subdivision (g) of section 69.5 defines a number of terms used in that section, it does not include a definition of the term "owner." Since section 69.5 is a specific type of exclusion from change in ownership and its sole purpose is to avoid what would otherwise be the effects of a change in ownership, we conclude that the term "owner" should, in the absence of any other specific definition, be construed in a manner consistent with the other provisions of law applicable to change in ownership. Thus, the present beneficiary of an irrevocable trust, rather than the trustee, should be considered the owner of the property held in trust for purposes of section 69.5. Of course, where the property is subject to a revocable trust, the beneficial owner is still considered to be the trustor.

I trust the foregoing discussion will be helpful to you. The views expressed herein are, of course, advisory in nature and are not binding upon any county assessor. You may wish to consult the assessor of the county in which the property is located in order to determine whether the property will be treated in a manner consistent with the views expressed above.

Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours,


Richard H. Ochsner
Assistant Chief Counsel

RHO:cb/2288D

cc: Mr. John W. Hagerty
Mr. Verne Walton